

Steere Dairy, Inc. and David L. Watkins. Case 6-CA-10661

August 21, 1981

# SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND  
ZIMMERMAN

On August 25, 1978, the National Labor Relations Board issued its Decision and Order<sup>1</sup> wherein it ordered Respondent to offer reinstatement to, and make whole, David L. Watkins for loss of pay suffered by reason of Respondent's discrimination against him. On August 14, 1979, the United States Court of Appeals for the Third Circuit entered a judgment<sup>2</sup> summarily enforcing the Board's Order. A controversy having arisen over the amount of backpay due the discriminatee under the terms of the Board's Decision and Order, the Regional Director for Region 6, on March 4, 1981, issued a backpay specification and notice of hearing alleging the amount of backpay due. Respondent failed to file an answer to the specification.

On April 13, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on April 16, 1981, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the Regional Director's Motion for Summary Judgment should not be granted. Respondent failed to file a response to the Notice To Show Cause and, accordingly, the allegations in the Motion for Summary Judgment stand uncontested.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

## Ruling on the Motion for Summary Judgment

Section 102.54 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, provides, in pertinent part, as follows:

(a) The respondent shall, within 15 days from the service of the specification, if any, file an answer thereto . . . .

(c) If the respondent fails to file any answer to the specification within the time prescribed by

this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without notice to the respondent, find the specification to be true and enter such order as may be appropriate. . . .

The backpay specification and notice of hearing, duly served on Respondent by certified mail on or about March 4, 1981, specifically states that if an answer to the backpay specification is not filed within 15 days from the date of service thereof, "such allegations shall be deemed to be admitted to be true and Respondent shall be precluded from introducing any evidence controverting them." Further, by letter dated March 24, 1981, Respondent's attorney of record was notified that an answer to the backpay specification had not been filed, and that summary judgment would be sought unless an answer was received immediately. Respondent's attorney, by letter dated March 26, 1981, notified counsel for the Regional Director that he had withdrawn from this case. By letter dated March 27, 1981, Respondent was notified that an answer had not been filed in accordance with Section 102.20 of the Board's Rules and Regulations, and that unless an answer was received immediately a Motion for Summary Judgment would be filed. Respondent has not filed an answer to the backpay specification or to the Notice To Show Cause and, in accordance with the rule set forth above, the allegations in the backpay specification are deemed to be admitted and are found to be true. Accordingly, we grant the General Counsel's Motion for Summary Judgment.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Steere Dairy, Inc., Meadville, Pennsylvania, its officers, agents, successors, and assigns, shall make whole discriminatee David L. Watkins, the employee named below, by payment to him of the amount set forth adjacent to his name, plus interest to be computed in the manner specified in *Florida Steel Corporation*,<sup>3</sup> 231 NLRB 651 (1977), until payment of all backpay due, less tax withholding required by Federal and state laws:

David L. Watkins

\$5,705.74

<sup>1</sup> 237 NLRB 1350.

<sup>2</sup> *N.L.R.B. v. Steere Dairy*, No. 79-1084.

<sup>3</sup> In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.